

THE STANDING SENATE COMMITTEE ON
HUMAN RIGHTS
UNREVISED EVIDENCE

OTTAWA, Monday, February 12, 2007

The Standing Senate Committee on Human Rights met this day at 4 p.m. to monitor issues relating to human rights and, inter alia, to review the machinery of government dealing with Canada's international and national human rights obligations.

Senator A. Raynell Andreychuk (*Chairman*) in the chair.

The Chairman: We are gathered to start the first of our hearings with respect to monitoring issues related to human rights, and inter alia, to review the machinery of government dealing with Canada's international and national human rights obligations.

That was our original, specific order of reference from the Senate when the Standing Senate Committee on Human Rights undertook to review the machinery of human rights and its implementation and use in Canada. We were looking at international and national machinery — how they work together. Are they a seamless web or two distinct tracks? We were looking at the machinery rather than specific cases of human rights' issues.

We produced a report, called "Promises to Keep," which outlined deficiencies and some strengths within our present human rights system. From time to time, we have continued to look at varying issues with respect to the machinery of human rights.

With the change from the United Nations Human Rights Commission into a council, we have been monitoring and watching that. We thought, as the new session will begin in March, I believe, that it would be an opportune time to acquaint ourselves with some of the aspects of the changes between what used to be — and we had worked toward a commission and its operation in furthering human rights — to now the new council. We are pleased that there are some experts — foreign policy experts, not just human rights experts — who have been following this and can share their perspectives with us.

Honourable senators, you were provided with the historical background, a briefing compiled by Laura BARNET, to bring you up to speed on the actual machinery and how it has changed, culminating in the council. That is for your use as a backgrounder, both for the hearings we will hold in Canada and for our visitation in Geneva.

Today, we have with us Professor Akhavan, whose biography is in your materials. He is a professor at the University of McGill, who teaches and researches in areas of public and international law, international criminal law and transitional justice, with a particular interest in human rights and multiculturalism, war crimes and prosecutions, UN reform and the prevention of genocide.

We also have someone who is well known to the Senate hearings, Mr. Paul Heinbecker, former Canadian ambassador and permanent representative to the United Nations, and former ambassador to Germany. He is presently a Director of Laurier Centre for Global Relations and is a Distinguished Fellow, International Relations, at the independent research Centre for International Governance Innovation. Welcome to our two panellists. I believe Mr. Heinbecker will lead off.

Welcome to the committee. You can share any perspectives on human rights, particularly with the workings of the international machinery within the UN system — and also within the context of UN reform.

Paul Heinbecker, Distinguished Fellow, International Relations, Centre for International Governance Innovation (CIGI): Thank you. The best thing I can do is talk a bit about the UN and UN reform and situate the reform of the United Nations Human Rights Council in a larger context.

There are two or three mega-issues to bear in mind when thinking of UN reform and where all of this fits into it. First, the international community has never been more divided than it is today and there has never been less consensus on issues. In the UN there is not even consensus on the main issues, let alone what should be done about them.

For the original signers of the UN Charter, collective security is a priority. For countries like the United States, terrorism is the issue beyond all others, the one that is paramount. For the G77 countries, 130 or so, the issue is about development and not about security. As far as those countries are concerned, the emphasis should be placed on and the resources should go to development. Security is more a matter for the larger and richer countries to worry about. In reality, the citizens of the countries that will benefit most come from among the G77 but many still do not accept that notion of the responsibility to protect. Rather, they see it as a kind of diversion. All of the unfulfilled development assistance promises made by rich countries are seen as betrayals and indications of their lack of interest.

Even among the rich countries, who would say that collective security and the UN Security Council is the most important thing, there is no consensus. You will likely recall Mr. Putin's discussion at a security conference in Munich a few days ago when he criticized the United States for unilateralism. That is fundamentally how most of the membership sees it, even among the western countries. There is a great deal of anxiety about the direction of U.S. foreign policy, in particular vis-à-vis Iran and the United Nations. If not yet, there will soon be at least two carrier groups in the Persian Gulf and there is talk of a third one arriving. It is said by some observers that within the year, there will be some sort of attack on Iran.

I say that not only to criticize the United States but also to say that it is part of the framework in which all else is considered. There will be no discussion of human rights that does not take into account these larger issues. The whole UN reform fight, and there is a fight, is a kind of politics by other means. There is neither agreement on the Arab-Israeli issue nor on the Iraq issue, and there is suspicion about what the Iranians are up to and what the Americans are up to about the Iranians. The whole situation is fraught with disagreement. When you try to reform, those larger, or as some might say “extraneous,” issues are pulled into it. The UN Human Rights Council becomes a proxy for another kind of issue, and that kind of fighting can be seen regularly.

Second, we hear a great deal about accountability at the UN and the importance of the UN Secretariat being accountable and the failures of the former Secretary-General Kofi Annan to be accountable. People do not understand, even with the investigation led by former U.S. Federal Reserve Chairman Paul Volcker into the oil-for-food scandal, that no one is accountable at the UN. That is the way the place was designed. The secretary-general is the secretary-general and he is the chief administrative officer of the organization, not the chief executive officer. He does not run the UN, the Security Council, the General Assembly or the Economic and Social Council. He runs the secretariat, and that is all.

When people think about the UN, they associate it with things that they are more familiar with. The Government of Canada has a prime minister who is responsible and accountable for everything that goes on in respect of the Government of Canada. Nortel has a CEO, who is accountable for everything that goes on at Nortel. However, at the UN, no one is accountable. The Security Council is not the cabinet of the UN but is a separate institution. The UNSC makes its own decisions that do not have to be referred to and/or ratified by the UN General Assembly. If anyone is in charge of the UN, it is the permanent five members of the Security Council.

The oil-for-food scandal was a politically motivated smear of the UN for not supporting the war in Iraq. It was nothing more than that. It seems that \$140,000 has gone missing in the oil-for-food budget, which totaled some \$60 billion over its lifetime. The hearings in the U.S. Congress that took place a few days earlier under the chairmanship of Congressman Waxman, from California, into the missing \$12 billion could not be held until the Republicans lost control of the House. The Coalition Provisional Authority is unable to say what happened to \$12 billion, \$9 billion of which was given by the UN Oil-for-Food program to to disburse at the end of the war.

The UN is on the hook for \$140,000 and the U.S. on the hook for \$12 billion, and there was no Congressional hearing into the latter for three years, even though the money was known to be missing. All the talk you heard about Kofi Annan and about what a terrible place the UN is, remember that \$140,000 is missing out of a budget that at one time was \$60 billion. The entire business of oil smuggling and oil payoffs were all misdeeds carried out by companies, many from P5 countries and Saddam Hussein, in contravention of successive UN resolutions. They blamed the UN Secretariat for it although it was trying to monitor the situation. It was not the first time that the members have let the secretariat take the rap: Rwanda was another case.

I have said enough about that. The point is that you cannot hold the UN Secretary-General accountable for something that he is not accountable for, and that includes the functioning of the UN Human Rights Council. Nor can Ms. Louise Arbour be held accountable for the behaviour of member countries. The problems infecting the Human Rights Council and everything else in the UN are the larger, international geo-strategic problems that are not being resolved and on which there is huge disagreement internationally.

As a context, I will leave it at that.

The Chairman: That can take us in many directions. Mr. Akhavan, please proceed.

Payam Akhavan, professeur adjoint, Faculté de droit, Université McGill:

Madame la présidente, honorables sénateurs, merci de m'avoir invité. C'est un très grand privilège et il me fait grand plaisir de pouvoir partager avec vous quelques idées sur le Conseil des droits de l'homme de l'Organisation des nations unies.

I will follow on the overarching context that Mr. Heinbecker capably put before you to speak about some of the central features of the Human Rights Council in relation to the Human Rights Commission. I apologize if I am repeating things that you may already know. I am not sufficiently knowledgeable about what you have already discussed. I will then speak about particular aspects of institutional reform and will end by making specific recommendations on how Canada can adjust its relation to this new body.

When the resolution on the Human Rights Council was finally tabled for adoption by the General Assembly in April of 2006, Ambassador John Bolton of the United

States expressed his disapproval. You know that the United States, together with Israel, Palau, Micronesia and the Marshall Islands, voted against the council, believing that it did not go far enough in the adjustments necessary to leave behind the unfortunate past that characterized the commission.

Ambassador Bolton said that we intended to have a butterfly but instead have a caterpillar with lipstick. This is yet another expression of the poetic nature of Ambassador Bolton's metaphors.

While the council has clearly not moved as far as we would have liked it to, there are significant differences, at least structurally, between this and the predecessor, which is cause for modest but cautious hope. I will briefly speak about some of those elements.

I will first explain what is, in many respects, obvious, that is, that it is one thing to reconstruct structures; it is yet another thing to change the culture of international diplomacy. At the end of the day, if we do not leave bad political habits behind, structural reform will only carry us so far. It is in that respect that I believe Canada can play an important leadership role as it struggles to recreate its international identity in the post-9/11 world.

As an example of how old habits die hard, I would like to read for you sample paragraphs from resolutions the council has adopted thus far. The council has had four special sessions. It is now a regularly constituted body, a permanent body, so, unlike the commission, it does not meet periodically but is a standing body, which, in itself, is a great improvement. It is a subsidiary organ of the General Assembly rather than that of the Economic and Social Council, which means that it is structurally being mainstreamed within the UN system, another positive development.

However, the politics seem to be a repetition of the past. From the four special sessions thus far, three have focused in one way or another on Israel and only one, after tremendous international pressure, on the case of Darfur. If one looks globally at the situation in the Democratic Republic of Congo, in Myanmar and in so many countries around the world, one begins to see this is very much an expression of the sort of political selectivity that the council should have moved beyond in relation to the commission.

One of the paragraphs of the resolution establishing the council says that the work of the council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity. That is the essence of what we should be striving for.

By way of example, we have special session resolution S-3/1 of November 15, 2006, which, in paragraph 1, expresses its shock at the horror of Israeli killing of Palestinian civilians. In paragraph 4 it expresses its alarm at the gross and systematic violation of the human rights of the Palestinian people.

The question is not whether there are not legitimate human rights issues. However, contrast this language with the following language in relation to Darfur. Paragraph 1 of decision S-4/101 of December 13, 2006 expresses its concern regarding the seriousness of the human rights and humanitarian situation in Darfur. That is the sole paragraph which, in a very oblique way, without condemning the Sudanese government, expresses concern. In the next paragraph, it welcomes the cooperation established by the Government of Sudan.

It is scandalous when one thinks that, at last count, 200,000 people were dead and 2 million displaced in Darfur. Many would say that number is very much dated, that it is probably 400,000 dead and 4 million displaced.

This is a very unfortunate beginning from the point of view of the transformation of political culture. Of course, Canada voted appropriately on these resolutions but, once again, because of the numerical inferiority of the western group, was unable to have any significant impact on the outcome.

Leaving this problem aside, I want to speak about what I think are the promises of some of the structural changes. The most significant change is the universal periodic review mechanism that is envisaged in the resolution establishing the council. This is a matter of great complexity. I know my time is limited, so I will only deal with it in broad strokes.

It is significant that the General Assembly envisages that there will be, on a periodic basis, a review of the human rights record of each and every member state of the United Nations. This is truly a phenomenal development. We know, for example, that every year the United States does an annual review of the human rights records of countries around the world. The importance of this is that it is potentially a unique mechanism by which we can depoliticize the way in which human rights situations are considered by the council, which is at the essence of creating a credible impartial body.

One of the first points is to try to influence the process of developing the practical mechanisms through which the review will take place. The resolution provides that it will be a one-year period during which this mechanism will be formulated. Therefore, within the next two or three months we should have some idea of what this mechanism is. It would be extremely important to keep this review process out of the hands of member states, to either entrust the task to the office of the High Commissioner for Human Rights or to create a working group of eminent persons whose reputation in the field is beyond reproach. Above all, one must keep this disentangled from the politicization that would be created if member states were involved.

The universal periodic review must be seen within the context of two other dimensions. One is the political organs, organs that are not of a judicial or quasi-judicial in nature, such as Security Council or General Assembly referrals of situations to the council. The other is treaty-based mechanisms, which I understand is also one of the issues your committee is presently considering.

The universal periodic review cannot be a substitute for other mechanisms such as what are called special procedures, special rapporteurs or other mechanisms that look urgently at situations that require immediate attention. One of the great challenges of the United Nations is to act in a preventive capacity rather than waiting until we have violence that escalates to genocidal proportions when it is really too late to influence things in a positive way, to adopt resolutions condemning a situation that is already beyond our control.

It is important, in addition to universal periodic review, that there be mechanisms which allow for urgent, expeditious engagement on situations as they develop, because one cannot wait until the next review comes up in three or five years, or whatever the periodic requirement will be.

The second point is that it is essential to have a graduated response to different situations. We need to understand that human rights violations cannot just be lumped together in some big abstract concept. Human rights situations involve different types

of violations and different types of government, which therefore involve different types of response.

For instance, if there is a government which in principle is willing to comply but does not have the means, obviously the appropriate response would be technical co-operation, engagement of that nature. However, if there is a government that is determined to exterminate its population, clearly one needs a very different approach.

It is important not to reduce the engagement of the council to condemnation. Condemnation is tempting and easy. Engagement is infinitely more difficult. One needs to have both resolutions that condemn bad practices, but also those which encourage good practices.

My final point in relation to the political organs or decision-making procedures is the need for a standing commission of inquiry. I am not speaking as to whether or not this is politically feasible, but I believe it is institutionally highly desirable.

For example, in relation to the conflict between Israel and Hezbollah over the summer, there was a commission of inquiry that was established after the fact, with a very flawed mandate that only looked at one side of the conflict. Because the mandate was flawed, the commissioners who were eventually appointed were not of such a high calibre, precisely because those potential commissioners of high reputation would not want to be associated with such an enterprise.

We now have a commission of inquiry on Darfur, headed by Jody Williams. It is a little too late. This should have been established quite some time ago. What we need is a standing commission of inquiry that can immediately be deployed where it is needed, rather than having to wait several months until you approach people, inquire about their availability and then put a staff together.

We also need a standing commission which avoids politicization, the appointment of people whose credentials are questionable and who have political agendas. We need a panel of eminent persons who are beyond reproach, whose function is to engage in fact-finding, as necessary. The essence of an objective procedure is the objective determination of facts as opposed to speculative accusations which are politicized.

I will now speak about the last part of the issue, the treaty-based mechanism, which is an important pillar, a more legal or quasi-judicial pillar of the UN human rights enforcement system.

Treaty-based mechanisms, of which there are many, are generally linked to particular treaties, such as the Covenant on Civil and Political Rights and the Convention against Torture. Each of them has a corresponding committee. Forgive me once again if I am restating obvious facts.

There are two different functions, and it is important to distinguish between them. One is the submission of periodic reports by states parties. Every so many years, states parties to these treaties must provide a report about their overall human rights performance.

Then there is a different function altogether of individual petitions, submission by individuals who are citizens of states parties who have exhausted domestic remedies. Of course, the case of Sandra Lovelace Nicholas, who I understand is a member of this committee, is a perfect instance of how, when one has exhausted domestic remedies, in this case the Supreme Court of Canada, one can go to the Human Rights Committee. In the case of Canada, it was to great effect.

One of the problems is the multiplicity of committees. We have a committee on discrimination against women, on torture, and on racial discrimination. There are too many committees, to the point where states, in particular, developing countries, are simply not able to meet their obligations of submitting reports. There are now almost 1,500 reports which are delayed, which have not yet been submitted. The total number of reports submitted is about 1,200, so you can see that there is a chronic problem with the submission of these reports. An additional problem is that if these reports were submitted all at once, the whole system would collapse because the committees do not have the capability of dealing with so many reports.

There is clear recognition that one needs to rationalize the whole system. Instead of submitting five different reports to five different bodies, when there is clear overlap, the Covenant on Civil and Political Rights is the basic human rights instrument, at least with respect to civil and political rights. The Convention against Torture is substantively subsumed by the Covenant on Civil and Political Rights. The Convention on the Elimination of All Forms of Discrimination against Women may be more elaborate, but the basic principle of non-discrimination with respect to women is also contained in the Covenant on Civil and Political Rights. Strategically, one must see the covenant as the basic instrument for building a viable system which consolidates this multiplicity of bodies.

The fact that the Covenant on Civil and Political Rights is almost universally ratified also makes it that much easier. For example, the Convention on the Elimination of All Forms of Discrimination against Women has not been ratified by a large number of states, in particular, states in the Islamic world, which have certain reservations; or, if they have ratified it, they have entered so many substantive reservations on what equal treatment under the law means that it almost defeats the object and purpose of the convention. There are many reasons why the Covenant on Civil and Political Rights should be the bedrock on which we build.

So far the emphasis has been on consolidating reporting procedures: Instead of asking a state to submit five reports, let us just consolidate it into one. However, that is not the real problem. The High Commissioner rightfully observes that the problem is that when you have such a fragmented system, you do not have the visibility, the authority and the access which you need in order to have credible human rights bodies. We need to consolidate not just reports but also institutions.

First, we need to develop a long-term vision of what we are trying to achieve. That long-term vision, I would respectfully submit, is to move eventually to the creation of an international court of human rights. As a fundamental institution of global governance, we need a court of human rights corresponding to the European Court of Human Rights, to the Inter-American Court of Human Rights, and to these regional institutions.

The question of political feasibility is something else, but we should not lose sight of the long-term objective. We should let our pragmatic considerations as to political feasibility be guided by this long-term objective.

With a view to developing such judicial mechanisms, we should try to separate the functions of the committee, state reporting vis-à-vis individual petitions. Individual petitions have a quasi-judicial character which over time could mature into a more formal judicial procedure.

In terms of Canada's response, other than engagement on these issues, there are two points that I want to suggest. One is that Canada may consider the appointment of an

ambassador-at-large for human rights. The Nordic countries and the Netherlands have such an institution. The United States has an ambassador-at-large for war crimes issues. It may be valuable. This is not to say we should create a whole new bureaucracy in foreign affairs, but the point is to have a focal point in the Canadian government that looks at human rights in a broader context as an essential part of Canadian foreign policy.

Canada, by its own actions, has to exercise leadership and establish its credibility. I end by speaking about what transpired at the first meeting of the human rights council when the Iranian delegation included, among its members, Said Mortazavi, a former prosecutor general of Iran implicated in the torture and murder of Zahra Kazemi, a Canadian citizen and photojournalist from Montreal. I speak to you today as someone similarly situated in that I am of Iranian origin.

Now, why do I bring this case? Because, getting back to the question of the political culture and credibility, the presence of Said Mortazavi was a slap in the face both to the United Nations and Canada that someone, who is one of the most notorious torturers in Iran and implicated by an Iranian parliamentary commission in the brutal murder of a Canadian citizen, would be present at this commission. After some pressure the honourable prime minister rightly called for the arrest of Said Mortazavi, which sent shock waves among reformists within Iran.

It is just unfortunate that, despite this commendable action, the Canadian government has not followed through to formally open an investigation against this individual and to issue an indictment. I say this because if we allow Canadian citizens to be murdered with impunity what credibility are we going to have in exercising leadership more globally on human rights. I apologize for the length of my presentation but thank you for your attention.

The Chairman: I think we have gotten the broad general UN reform and the more specific council and that is what we were looking at. Mr. Heinbecker, you are saying that the UN has never been as diverse as it is now.

Mr. Heinbecker: It has never been as divided. Or diverse. Both.

The Chairman: Is it not a fact that for many years it was divided, the east or the west, and you either fell into one camp or the other. One, particularly in human rights supported political and civil covenant, the other, the economic and social. We had the Soviet Union and the west. African countries and Latin American countries found themselves going into those. It took some time to get the G77 going.

Is it a better situation and does a country like Canada have more opportunities to influence the UN structures from day-to-day than it did when it was clearly east and west you fell into one or the other. We were a middle power; we developed that middle power concept. Are there new mechanisms we should find to influence this more fragmented divided situation?

Mr. Heinbecker: Looking back, a better choice of word is “fragmented” rather than divided. It was divided in two in the Cold War, but now the west is fragmented. That part which we used to think of the west is very fragmented. That is partly because of the Iraq war, partly because of the on-going Arab-Israeli conflict, partly because of U.S. unilateralism and the U.S. attitude towards treaties, which is increasingly dismissive of treaties, the Non Proliferation Treaty for example.

On that part of the UN membership that used to be the west there is no longer as much harmony. And even on that part that used to be the east, there is not that much harmony either. There is considerable disagreement among those former Soviet countries.

But where you find the real divisions that are so plaguing the UN, is in the notion of the Hegamon against the rest. You see that particularly in the G77. It is an explanation for part of the voting that one has seen. There is a solidarity that people will maintain, even in the face of things that are manifestly not in their interest or even manifestly wrong. The larger value, for a lot of countries, is to stick together because they feel weak and powerless. They largely are, but if they seem to think that if they can stick together they at least have some kind of clout vis-à-vis the United States and the other powerful countries.

In those circumstances, what can Canada do? My own assessment of our situation is that we still have a very good reputation. We have earned that reputation internationally over the years. We have also earned it domestically, especially with regards to human rights and the generosity we show towards diversity. When I spoke at the UN, I was always given a polite and attentive hearing. Not every country can say that; lots of countries cannot. I would say right now probably Australia would have a hard time getting such a hearing; but nonetheless we could.

I think we need to call them as we see them. We should stand for human rights. When we see things happening that we disapprove of, we should say so. When we see things happening that we approve of we should probably say that, as well, but we should not shrink from that. We should ask ourselves now if we are actually doing that. Is calling the reaction of the Israelis to the Lebanese Hezbollah attack last summer measured? Is that earning us standing in a human rights sense in international councils? I do not think so. Is taking a position that is manifestly pro-Israel, described as being pro-Israel, without a word of criticism, very different, in its own way, from what we were hearing from human rights groups?. It is not as egregious evidently. But if we are going to pick sides, not stand on international law or human rights, we can expect not to have much influence on the outcome.

My advice is that there is a system of international law and we should not shrink from defending it. We are the ones who helped build it after all.

Hon. Vivienne Poy: Mr. Heinbecker, I have been listening to a lot that you have said and also observing what has been happening internationally. You mentioned that there is no one accountable at the United Nations. Aside from what you just said, that we need to stand up for human rights and justice, do you really think the UN is still relevant, aside from just speaking up at the right times?

Mr. Heinbecker: I think people rightly, but at some level also mistakenly, look at the UN Security Council with regards to Darfur and say, my God they cannot even fix Darfur. What good is this organization? They lose sight of the fact that there is a peace building commission, peace keeping operations, peace enforcement, a whole body of law on human rights, support for democracy, a criminal justice system, sustainable development and an environmental dimension to the UN, none of which you will find in the charter. These are all innovations. The very existence of UN high commissioner for human rights is an innovation. All of these are doing extremely good work.

Where the UN falls down, interestingly enough, is where the member countries come in. It is a little bit like the Walt Kelly saying in the old Pogo cartoons: "We have met the enemy and he is us."

The secretariat, generally, and the individual agencies, although they are not perfect, they are human beings after all, but they are very talented, very capable people doing the best jobs they can in most circumstances. The failure comes with the member countries. In saying that, it is very easy to throw out the baby with the bath water. In fact you would be throwing out quintuplets with the bath water. There is a lot going on with the UN that is very successful. When we cannot get agreement in the Security Council to do something then the secretariat and the secretary general cannot do anything about it. I am thinking, for example, of Iraq and Darfur.

Senator Poy: You mentioned that Canada has always had a good reputation at the table at the UN. Are we losing that with recent events?

Mr. Heinbecker: One would have to do some kind of a survey. My instinctive answer is: Yes, we are. We have been criticized by the president of the Arab League. One can tolerate criticism; we do not have to agree with it. However, we are being regarded as becoming increasingly more pro-Israeli, as the government wants us to be perceived. As far as I am concerned, if the government wanted to call them the way it saw them, if it would stand up and say, "This is a violation" and "That is a violation," that would be an entirely tenable position; but when it stands up and says, "This is a violation," and that is all it says, then it will undermine our reputation.

Senator Munson: I was not ready to ask this question, but on the other side, the present government has stood up quite openly in defence of the religious person from China. After living and working in China for five years, I admire what this government has done in that way. They stood out; they have not played the game that has been played for some time in dealing with China. On that scale, in that perspective, do we get bonus points in the human rights world by standing up for an individual who has been incarcerated in China?

Mr. Heinbecker: I think we do. That is part of what I am talking about. Frankly, it [China] can be done in a way that causes a little less collateral damage, but I think standing up and saying, "Yes, this is a Canadian citizen, and this process is not a legitimate process," or that we have interests in it, is something the government should get credit for doing. Would that it did it everywhere.

Senator Munson: On another issue, you talked about the Sudan situation, the Israel situation and the new human rights council, with which I am not that familiar. Who holds the pen on writing this up, and when the human rights council sits down to do its business are there 10 or 160 men and women? How do they come to the resolution in dealing with the four resolutions that they have dealt with? Whoever holds the pen on this, someone has to agree to it in terms of the words being used. As you had described it, it was scandalous because it was soft-peddling what was going on in Sudan; yet, on the Israeli side, it was very hard-hitting. Do we know how that mechanism works?

Mr. Akhavan: Yes. It has been some years since I left the UN and sought refuge in academia, but I will try to explain to you the process.

Senator Munson: I sought refuge in the Senate.

Mr. Akhavan: From a structural point of view, there are 47 members in the council. They are selected based on regional blocks. That is perhaps part of the problem, that there are regional blocks that have certain numbers allocated to them. One of the criticisms of the council reform, for instance, is that the Americans had wanted to have only 20 members rather than 47, which would make it a more elite

group in that only governments with very strong human rights records would be elected.

Part of the effect of reducing the number from 53 to 47 and conditioning human rights performance is that certain countries such as Iran were not elected, even though they ran, and countries such as Sudan and Zimbabwe did not even bother to run because they knew clearly that they would not be elected; but countries such as Cuba, Saudi Arabia and Pakistan — countries with questionable human rights records — are members.

How does the voting actually take place? In the case of the Israeli question, for instance, it is almost always a member of the Organization of Islamic States that will sponsor this resolution. As Ambassador Heinbecker has pointed out, even if their objective is for political reasons to condemn Israel, when they do it in such a blatantly one-sided way they undermine even that interest. When a resolution says that we will only look at Israeli humanitarian violations on Lebanon but not look at all at Hezbollah's rocket attacks against Israeli cities, it is so blatantly partisan that it loses all credibility.

Governments such as Canada and the western block obviously try to negotiate with those who are involved, but since they have a numerical majority, and in the context of what Ambassador Heinbecker explained as a tremendous antipathy towards the United States, people take particular pleasure in adopting these sorts of resolutions there. There is a politicization that does not leave room for a more balanced approach.

In practical terms, how does it work? Usually it will be one state or group of states that will table a resolution. It is a draft being circulated. Very often they have already agreed on a text and ensure that they will get the requisite number of votes. The degree to which one can actually debate that particular draft will depend on how much preparation has gone into a developing consensus among a substantial majority before it is circulated.

In this case, countries such as Canada will simply be outvoted and there is not much they can do.

Mr. Heinbecker: It is typical of the UN that one country or one group of countries takes the lead. No one concedes the lead to them, but they just assume it. They get together. They care more than others, apparently, and they put down the resolutions first. Sometimes there are counter-resolutions. Much drafting that takes place, but again, if they have their ducks lined up, it is not easy.

Senator Munson: Basically, they are ganging up on some other country. If there is nobody accountable, you can do this and move on.

The Chairman: Professor, under the old commission, if Canada felt very strongly about some human rights situation or violation, whether it was on a thematic or a country basis, it would do its homework and then start negotiating with other countries to see if they had the same concerns. If there was a consensus growing, they would then see where the opposition may come from and see whether they could negotiate it out or how to manage the opposition. Is it working the same way in the council?

Mr. Akhavan: It is pretty much the same in the council. The difference is that there are six fewer states, which is not a huge difference; we have gone from 53 to 47, and some of the most objectionable candidates are no longer members. We do not have Sudan and Zimbabwe sitting at the same table. However, we still have China and

Russia. It may be subject to debate whether that is a good or bad thing. The same dynamics take place. The only difference here is that there is a more conscious linkage of membership with human rights records and the resolution establishing the council requires that states pledge as a cost of their membership in the council to pay particular heed to their human rights record.

It remains to be seen whether those pledges will be observed or not, but the horse-trading remains as before.

The Chairman: That is, to diminish the opposition or to neutralize it or to get an abstention, all of the normal things still apply. In other words, politics plays a part.

Mr. Akhavan: Exactly. That is why in the beginning I was emphasizing that the essence of moving toward an effective system is to create independent bodies and to increase the power of those bodies vis-à-vis member states. Member states are for the most part political, and even western liberal democracies that may have a broader commitment to human rights are not going to vote against Saudi Arabia because of the economic interests involved.

Although certain countries are liable to be more politicized, our own part of the world is not necessarily exempt from that process. In a sense, it relieves us from the burden of the embarrassment of voting against Saudi Arabia when we have commercial ties by saying that this was an independent commission of inquiry; this was an independent review mechanism under the High Commission for Human Rights. It is not in our control. The point is how to create those mechanisms that in the long term will gradually depoliticize.

Now there is a unique window of opportunity to try to do that, although, as Ambassador Heinbecker said, the UN is profoundly divided. The council has been established by an overwhelming majority of the General Assembly. There is now this one-year period in which the universal review mechanism is to be put in place. Now is the time to strike. Now is the time to exploit the opportunity to create effective mechanisms, because once they become crystallized, it becomes exceedingly difficult to bring about further reform.

Senator Munson: I am curious with respect to the recommendation. Part of our questions here is about how the government can make the council more effective. You mentioned Canada might consider an ambassador on human rights. Does our former ambassador agree with that, and would such an ambassador have the power to deal directly with the secretary-general or the ambassador now dealing with human rights at the UN?

Mr. Heinbecker: We have an ambassador who is responsible not only for human rights, and he is coming to this committee next week, Mr. Paul Meyer. I am not sure he can answer that question, but his views would be interesting to know. He is also the ambassador for disarmament and a number of other things in Geneva. He is not full time on this issue. With some deference to him, I think it would be a good thing to have a full-time ambassador who would be situated here rather than in Geneva, go back and forth for these kinds of meetings but who would have the kind of staff and support of several departments.

That would achieve a couple of things. First, it would raise the profile and standing of human rights as a foreign policy issue. It would also help to translate back into the Canadian system the importance of these human rights discussions and the necessity for us to get our own house in order. One thing we have not discussed much is that it is

not the easiest thing in the world to get Canadians lined up to implement treaties once the federal government has agreed to them, even when there has been a lot of consultation. We lag on those kinds of things.

Senator Carstairs: We talked briefly about the treaty mechanisms. My concern is that while it might be a good idea to make this a more congenial group, I have a feeling that some of the conventions would just get lost. I am thinking particularly about the one we have been working on, which is the convention on the rights of the child. That happens to have a large number of signatories, but even a country like Canada is in clear violation and has been cited over and over as being in clear violation.

If we intend to make these treaty board mechanisms report up through the council, will that not make a bad situation worse?

Mr. Akhavan: Yes, that is a good observation. My understanding is that the proposals are not that the treaty-based mechanisms become subordinated to the council but that they simply be consolidated. The problem is there are a multiplicity of treaties and bodies to which states must report. It becomes very cumbersome to have to submit six different reports to six different bodies with six different reporting guidelines. There has been a rationalization of the process, for instance, developing standard guidelines for all the bodies to submit consolidated reports. Instead of having six reports which involve six different appearances, only one report addresses these different issues.

Therefore, treaties such as the Convention on the Rights of the Child could be included in a consolidated procedure.

The question is whether we should continue to have different mechanisms dealing with these areas. My sense is that it may be more effective, instead of having this fragmentation, to have one central body that has certain prestige and authority. When you have too many bodies, none of them cumulatively can have the weight that a single central institution has.

In terms of reporting, one could easily have one body that has relative expertise, depending on what issue is being considered. The rights of the child, for instance, could be incorporated more broadly in the human rights record of a country.

With respect to individual petitions, however, we must start moving in the long-term direction of a proper judicial mechanism. We now have a quasi judicial procedure. The cost may be that you lose a certain degree of expertise, but the benefit is that we have centralized credible mechanisms with high visibility.

Senator Carstairs: I do not disagree with that, and I support an international court of human rights, but my experience with the Inter-American court is that the lineup is huge. We are dealing with parliamentarians from Latin American as part of my responsibilities as vice chair of the Human Rights Committee of parliamentarians of the IPU. We have referred a number of these cases to the Inter-American court, and we are talking years and years.

My concern about an international court of human rights is that, first, the Americans would not join because they do not join any international organizations of this manner; second, the proper funding would not be put into place to allow this court to be effective. We would end up with one more international organization that gives people a heightened sense of expectation that is not met.

Mr. Akhavan: Your observation is very correct. From the point of view of political feasibility, I would say the time is not right for even discussing seriously an international human rights court. All I am saying is that that should be part of a long-term vision of what we are trying to achieve. The transformation of a committee which has a quasi-judicial function of receiving petitions should be seen as ripening over time into a more formal institution.

The same problem of volume applies to the committee as it does to a court, except the court would have a more formal procedure. There are ways of dealing with those practical issues. One can divide a court into several different chambers. The xx European Court of Human Rights has the same problem of backlog.

Regarding the question of U.S. adherence, we have the case of the International Criminal Court which, despite not only the U.S. failure to adhere, but also U.S. active opposition and undermining of the institution, the court is making progress. In the case of Darfur, it was a very interesting situation where the U.S. was forced to accept the Security Council referral because when Colin Powell stands up and calls Darfur genocide, can it then veto a resolution that is referring this case?

I am not too concerned in the long term with more enlightened U.S. leaders understanding that such institutions are very much in their interest in terms of global governance. We should not be too easily swayed by political fortunes and circumstances in the short run, and we need to develop a longer term perspective and then plot our practical tactics and strategy in fulfillment of that goal.

Senator Carstairs: You have had four special sessions, three dealing with Israel. Perhaps they need a change in their method of procedure whereby a country could not come up for another session without a two-thirds vote. Otherwise, you would have to move on to another country's problems with human rights.

Mr. Akhavan: Clearly, one needs to give great thought and consideration to procedure, as this body is taking shape and taking form.

One procedure could be a requirement of a two-thirds vote. Another procedure could be, once again, creating mechanisms and a system of gradation. For example, when you have a universal review, it becomes very clear that these are the countries that fall into the rank of those committing gross systematic human rights violations. The report is there. It is produced by the office of the high commissioner for all to observe, which makes it that much more difficult to say we will have three sessions on Israel, nothing on Darfur, nothing on Myanmar, nothing on Congo and so forth.

Senator Stratton: I am not a member of this committee, but I have taken part in some travel. How many countries are now members of the United Nations?

Mr. Heinbecker: There are 192.

Senator Stratton: That would appear to be a large, complicated and over-bureaucratized body. That is the criticism, that there are far too many countries now, but there is not much one could do about it.

When you look at examples such as the Congo and how successful that seems to have been in resolving human rights, and when you look at the oil-for-food program in Iraq, they seemed to work. If you look at those things and say okay, despite everything, there are huge successes in the United Nations, why did those work and why can we not take those examples and push them down into the human rights area?

If there is such a multiplicity of countries and the over-bureaucratization of the UN, which is the image everybody has, then it is not working — but I think it is working in those two areas particularly. If they worked in the Congo and worked with oil-for-food, why can we not do this in this area?

Mr. Heinbecker: If you look at the UN dispassionately across the whole range of what it is trying to do, a lot of things worked. The oil-for-food program worked; it prevented Saddam Hussein from getting nuclear weapons and other weapons of mass destruction, which was its purpose. It had to be adjusted because too many people were starving or otherwise affected by it.

UNICEF works; it has inoculated 565 million children or something like that. The UN world food program has fed 100 million people in the last year. I am getting my numbers mixed up a little bit. The UN High Commission for Refugees has housed about 20 million people last year. These are very successful programs. There is a whole range of that that goes on.

There is also a lot of banal stuff, like allocating the electromagnetic spectrum, patents and a lot of other stuff that is being regulated, which nobody ever thinks about. Where the problem is, as Professor Akhavan was saying, is that the more political it gets, the more it reflects the current disagreements, then the more difficult it is to make progress. The most fundamental issue was Iraq — the weapons of mass destruction, Saddam Hussein and the total division of the organization and its paralysis.

Kofi Annan was trying to sell the idea, but did not quite make it, that there are basically three pillars in the UN: the security pillar; the economic development pillar; and the human rights pillar. A lot of the membership was not prepared to say there were three pillars — there were sort of two and something. It is partly because that is where the most contentious issues come to bear.

To some extent the Human Rights Commission was a victim of its own success. It was putting people on the carpet. They realized it was succeeding, so they used their ingenuity to get in there and direct attention at someone else. The country that had the fewest number of supporters was Israel. Therefore, Israel became the target.

I am not sure there is any way out of that. I hope there is. I think getting the procedures right helps. But the procedures in the Security Council have never been agreed to since 1945. Every time you think you understand something in the Security Council, somebody who is a permanent member can remember a case where it was not so and they use parliamentary procedure against you.

What I am sure you would see — and this is the larger point I was making — when the day comes that there is a Palestinian-Israeli settlement and there are two states and everyone is living in peace and security, then the Human Rights Council may be spending all its time on something else, perhaps Uighurs in China. However, so long as this is the most high-profile, unresolved issue involving a lot of human rights questions, it will be the central issue on the agenda. The membership numbers are such that it will be loaded on the side of the anti-Israelis. The Israelis are the country that can dominate the military dimension of this issue and the Arabs can dominate the diplomatic dimension of the issue. That is what is happening.

The Chairman: We must cut off. This point would be great for a continued debate on the fact the Human Rights Commission, at one point, was dominated by the apartheid issue. The Middle East was fought out in UNIP. The political dimension is

still with us. We have not even touched China and its influence on the world, along with Russia. It is a very complex issue.

We thank both of you for appearing and presenting your points of view. Professor Akhavan, since you have been studying the structures and procedures, if you have anything further you want to add, particularly following up with Senator Carstairs' point, the treaty implementing and monitoring committees have a particular expertise. On the Convention on the Rights of the Child, they have a particular expertise from the countries when they are put on there. If it will be coordinated, will we lose the dimension of why we set up separate treaties in the first place and why we did not just deal with the political and civil covenant? Why we did go into those areas? It was because of some sort of concentration of need, as we do in our laws.

If you have any reflections on how we lose, we would like to hear them. Once we start coordinating, once we start amalgamating, do we not lose, on the other side, the differential of why we had the treaty, what is unique about it and what it is there to achieve? If you have any more thoughts, I would appreciate hearing more about that in the next couple of weeks.

I thank both of our witnesses. I think you have given us the proper perspective to start this study on the council — the broader UN issue, the political dimensions and the actual operations. Within the commission, I think it was the ingenuity of how to achieve your objectives despite the politics, and sometimes using that to your advantage as well as your disadvantage, that created some success stories in the human rights field.

You have pointed us to the council and to the broader picture of the UN, so you have accomplished what we expected in starting this. We thank both of you for appearing and sharing your perspectives. If you have any other thoughts, we would like to hear them.

We are pointed now to continue our study and reflections. We hope to present a report that will be helpful to the Canadian government and to human rights.

The committee adjourned.